

(2023) 03 DEL CK 0105
In the Delhi High Court
Case No : MAC.APP. No. 142 Of 2020

Ashok Kumar

APPELLANT

Vs

M/S Viva International & Anr (Iffco Tokio General Insurance Co Ltd)

RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2023) 03 DEL CK 0105

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : S.N.Parashar, Sameer Nandwani, Pooja Tandon

Final Decision : Allowed

Judgement

Rekha Palli, J

1. The present appeal preferred by the claimant under Section 173 of the Motor Vehicles Act, 1988, seeks to assail the award dated 26.07.2019 passed by the learned Motor Accidents Claims Tribunal in MACP No.1546/2016 insofar as it relates to the quantum of compensation.

2. Vide the impugned award, the learned Tribunal has, after taking into account that the appellant is suffering from 100% permanent physical disability, as a result of the injuries sustained by him on account of the accident with the insured vehicle, has awarded him compensation of a sum of Rs.19,98,000/- along with interest @9%. The said compensation has been awarded under the following heads:-

S.No.

Heads

Amount(in Rupees)

1.

Medicines & Treatment

Rs. 3,11,703/-

2.

Conveyance

Rs. 20,000/-

3.

Special Diet

Rs. 40,000/-

4.

Loss of Income

Rs. 1,90,416/-

5.

Attendant Charges

Rs. 1,08,000/-

6.

Pain & sufferings

Rs. 1,50,000/-

7.

Loss of Enjoyment of Life and Amenities.

Rs. 1,00,000/-

8.

Compensation for mental and physical shock

Rs.30,000/-

9.

Loss of future income/prospects

Rs. 10,47,288/-

Total

Rs. 19,97,407/- rounded

of as Rs. 19,98,000/-

3. In so far as the factual matrix of the matter is concerned, the parties are ad idem that the accident took place on 16.03.2012 on account of rash and negligent driving on the part of the driver of the insured vehicle. When the fateful accident took place, the appellant was about 51 years of age and his annual income, after making deductions towards the income tax, was found to be Rs.1,90,424/- and, accordingly, his monthly income was assessed as Rs.15,868/-. It is also undisputed that the learned Tribunal has accepted that on account of the injuries suffered by him, the appellant requires the constant assistance of an attendant as he cannot even move on his own. Despite the physical disability of the appellant having been accepted as 100%, the learned Tribunal has taken his functional disability as 50% and accordingly granted him compensation towards "Loss of Future Income/prospect" by taking into account 50% of his monthly income. Furthermore, as against his claim for 'Attendant Charges' for life, the learned Tribunal has awarded the appellant 'Attendant Charges' only for a period of one year. Being aggrieved, the appellant has approached this Court seeking enhancement of the compensation.

4. In support of the appeal, Mr.Parashar, learned counsel for the appellant has raised four grounds. The first and foremost being that once it was undisputed that on account of the injuries suffered by the appellant, he had become completely bed-ridden and does not even have control on his bowel movement, his functional disability ought to have been taken as 100% instead of 50%, as taken under the impugned award.

5. Mr.Parashar next contends that the learned Tribunal has also erred in awarding 'Attendant Charges' only for a period of one year without appreciating the fact that, in view of the appellant's medical condition, he will require an attendant throughout his life. In support of his plea, that the amount towards payment of 'Attendant Charges' should be enhanced he relies on a decision of a Coordinate Bench of this Court in MAC.APP. 1015/2018 [Reliance General Insurance Co. Ltd. v. Avtar Singh & Ors.] wherein a sum of Rs. 10,00,000/- was awarded towards "Attendant Charges".

6. He next submits that, taking into account the appellant's condition, even the amount of Rs 1,00,000/- granted towards "Loss of Enjoyment of Life and Amenities" was highly inadequate and similarly the compensation of Rs.1,50,000/- granted towards "Pain & sufferings" was also inadequate.

7. On the other hand, Mr.Nandwani, learned counsel for the respondents, supports the impugned award by submitting that it is settled law that the permanent disability of a part of the body need not be treated as functional disability for assessing the loss of future income. He, therefore, contends that the learned Tribunal, by taking into account relevant facts, was justified in treating the appellant's functional disability as 50% instead of simply accepting the same as 100%, in accordance with his Disability Certificate.

8. He next submits that once it was evident from the testimony of PW-8, Bhim

Singh who had worked as an attendant for the appellant, that he was being paid about Rs. 300/- a day for his services, the learned Tribunal was also justified in granting Attendant Charges @ Rs. 9,000/- per month for a period of only one year, during which he had availed the services of PW-8. Furthermore, even the amount granted under the heads of "Loss of Enjoyment of Life" and "Amenities and Pain & sufferings" was just and appropriate. He, therefore, prays that the appeal be dismissed.

9. Having considered the submissions of learned counsel for the parties and perused the record, this Court is inclined to accept the plea of the learned counsel of the appellant that once it was found that the appellant was wholly bed-ridden his functional disability ought to have been taken as 100% and not 50%, as taken by the learned Tribunal. In fact, this Court finds that the learned Tribunal, despite noticing that the appellant is bed-ridden, has given no reasons for treating the functional disability as only 50%. The relevant extract of para 49 of the impugned award, wherein the learned Tribunal deals with this aspect of functional disability, reads as under-

"In the present case as per medical record, petitioner/injured-Ashok Kumar is a case of fracture dislocation of D4 over D5 with fracture D10& D11 with traumatic paraplegia with bladder bowel involvement with spinal shock with fracture ribs with pneumothorax with fracture clavicle (left) in the accident in this case and as per Disability Certificate (Ex PW-4/1) dated 23.1.2013 issued by DDU Hospital, Hari Nagar, New Delhi, the petitioner/ injured Ashok Kumar has suffered 100% permanent disability in relation to spine.

Hence, in view of above and in view of the material on record, the functional disability of the petitioner/injured in the instant case can be taken as 50 % and qua the income of the petitioner/injured, this comes to about Rs. 7,934/-p.m ."

10. From a perusal of the aforesaid, I am of the view that the learned Tribunal was wholly unjustified in coming to the conclusion that functional disability of the appellant should be taken at only 50%. Once the learned Tribunal itself found that the appellant has suffered injuries in his spine and even his bladder bowel involvement was affected and he was unable to move without the help of an attendant, his functional disability ought to have been accepted as 100%. It is not even the respondent's case that the appellant is able to carry out any vocation. The learned Tribunal's finding that the appellant's functional disability was 50% is wholly unsustainable and is, accordingly, set aside. The same would now be treated as 100% and consequently the compensation towards "Loss of Future Income/Prospects" would be computed by taking the appellant's monthly income as Rs.15,868/- and not Rs. 7,934/-, as was directed by the learned Tribunal. The compensation under this head would, accordingly, stand enhanced from Rs.10,47,288/- to Rs.20,94,576/- (Rs.15,868/- x 12 x 11).

11. This Court also finds merit in Mr.Parashar's plea that the learned Tribunal has erred in granting 'Attendant Charges' only for a period of one year, when it is

clear that the appellant would require an attendant throughout his life. Taking into account, that the appellant was only 51 years of age at the time of the accident and is now be about 62 years of age, it is evident that he would require an attendant at least for the next 10 to 15 years, if not for more. The direction issued by the learned Tribunal for payment of 'Attendant Charges' of Rs. 1,08,000/-, for a period of one year, also, therefore, needs to be modified.

12. Having perused the decision of the Apex Court in Avtar Singh (Supra) and taking into account that the said case pertained to a person who was 30 years of age at the time of the accident, while the appellant herein was 51 years of age at the time of the accident, the amount towards 'Attendant Charges' is enhanced to Rs.7,50,000/-. This enhancement is being directed as I am of the view that, in case, this amount of Rs. 7,50,000/- were to be kept in a fixed deposit receipt, the same would bear interest, which would be adequate for the appellant to meet the charges of the attendant, which he will be required to engage throughout his life.

13. I have also considered the appellant's plea for enhancement of the compensation awarded towards "Pain and Suffering", but find no reason to enhance the same. However, taking into account that the appellant is now completely bed-ridden, the amount of compensation awarded towards "Loss of Enjoyment of Life and Amenities" of Rs.1,00,000/- is enhanced to Rs.2,00,000/-.

14. For the aforesaid reasons, the appeal is allowed by directing that the total compensation awarded to the appellant will stand enhanced by a sum of Rs.18,97,000/- i.e from Rs. 19,98,000/-, as awarded by the learned Tribunal, to Rs 38,94,695/-. This compensation of Rs. 38,94,695/- under the following heads, will be payable with interest @9% p.a from the date of filing of the claim petition:-

S.No.

Heads

Amount(in Rupees) by the Tribunal

Amount(in Rupees) by this Court

1.

Medicines & Treatment

Rs. 3,11,703/-

Rs. 3,11,703/-

2.

Conveyance

Rs. 20,000/-

Rs. 20,000/-

3.

Special Diet

Rs. 40,000/-

Rs. 40,000/-

4.

Loss of Income

Rs. 1,90,416/-

Rs. 1,90,416/-

5.

Attendant Charges

Rs. 1,08,000/-

Rs.8,58,000/-

6.

Pain & sufferings

Rs. 1,50,000/-

Rs. 1,50,000/-

7.

Loss of Enjoyment of Life and Amenities.

Rs. 1,00,000/-

Rs.2,00,000/-

8.

Compensation for mental and physical shock

Rs.30,000/-

Rs.30,000/-

9.

Loss of future income/prospects

Rs. 10,47,288/-

Rs.20,94,576/-

Total

Rs. 19,97,407/-

rounded of as Rs. 19,98,000/-

Rs.38,94,695/-

rounded of as Rs.38,95,000/-

15. Taking into account that the accident took place more than 11 years ago, since when the appellant and his family members have been without any source of livelihood, I am of the considered view that this enhanced amount need not be kept in any FDR but should forthwith be paid to the appellant.

16. The respondent is, accordingly, directed to deposit, within 6 weeks, the aforesaid additional amount of Rs.18,97,000/- along with interest @9% p.a, from the date of filing of the petition with the learned Tribunal. A further direction is issued to the learned Tribunal to release the same in favour of the appellant, which amount may be utilised by him in the manner he deems fit. This would, however, not have any bearing on the directions issued by the learned Tribunal for placing the initial compensation in FDRs.

17. The appeal, accordingly, stand allowed in the aforesaid terms.